

TESTIMONY OF JOEL T. FAXON OF STRATTON FAXON, NEW HAVEN, CT
IN SUPPORT OF S.B. 763

The Connecticut Trial Lawyers Association fully endorses and urges passage of SB 763 concerning unfair insurance practices. The present law discourages the timely resolution of claims since there is no incentive for an insurance company to rapidly resolve claims and conserve court time and judicial department resources. Presently, insurance companies, acting with impunity, regularly force injured parties to file lawsuits and clog up the court system in cases where a payment under the insurance policy is required but can be delayed based on the backlog in the court system and the time it takes to move a case to trial.

The present statutory framework requires the plaintiff to try a case to verdict, obtain a judgment and thereafter file yet another lawsuit against the insurance company directly to obtain the judgment. There is no statute that prohibits unreasonable insurance settlement practices unless they are so pervasive to rise to the level of a regular business practice. It is nearly impossible for that level of proof to be obtained since the insurance companies maintain their files in secrecy and don't publicize the frequency of their unfair settlement conduct. Therefore, CUIPA should be amended to promote the early and fair resolution of cases and to avoid clogging the court system and costing taxpayers more money.

Examples of the insurance companies' unfair claims settlement practices abound. In DeStefano v. Caldwell, (ATTACHED) Allstate insurance company has refused to settle a case involving a collision between a highly intoxicated

driver and a child. Tyler DeStefano was walking his bike home from school on a sidewalk in Milford when Caldwell, an Allstate insured, who had been drinking liquor all day and maintained a blood alcohol level of .397, 5 times the legal limit, drove up on the sidewalk and hit the child. Tyler was thrown up in the air and seriously injured, requiring surgery. His parents, an educator and Milford police officer, have filed suit against Caldwell and Caldwell's parents – as owners of the vehicle Caldwell was operating - but the case remains pending. To date the family has incurred medical expenses exceeding \$20,000 on behalf of Tyler. Allstate has refused to settle the case and is delaying the matter solely to maintain possession of the funds. Further, Allstate has put at risk the assets of the defendant, Caldwell, and his parents, who, as owners of the vehicle, are liable for the actions of Caldwell. DeStefano is a case that should have been resolved long ago and without the unnecessary waste of precious judicial resources and the plaintiffs' time and money.

In Altice v. Nationwide Insurance Co., (ATTACHED) Fred Altice, a physician at Yale, was forced to try his case to a jury and obtain a judgment before Nationwide would pay him. He suffered serious injuries, requiring multiple surgeries, in a hit and run case. Prior to trial, Stratton Faxon agreed to forego attorneys' fees and settle the case for substantially less than the amount ultimately obtained after trial. The net to Mr. Altice, however, was the same or slightly less than he would have received in settlement, because he had to incur the costs of the trial of the case. In addition, despite being ordered by the court to not comment on, or use in a derogatory way, Mr. Altice's sexual orientation,

Nationwide's lawyers injected the issue into the case. After the verdict in the plaintiff's favor a second lawsuit was instituted for the bad faith conduct of Nationwide. If the proposed amendment was in place, this second phase of litigation – and the trial itself - could have been avoided since Nationwide would have had incentive to resolve the case fairly.

These are just two examples of the insurance industry practice of delaying settlement payments and wasting judicial resources. Presently, the Attorney General and the Insurance Commissioner are the only two individuals authorized to maintain a cause of action under the CUIPA statutes. The budgets of those two agencies are being taxed and the ability of private individuals to prosecute suits to reduce unfair settlement practices would alleviate the burdens on the state budget while reducing the number cases with delayed resolutions that clog our courts.

Finally, Connecticut would not be alone in providing a cause of action to reduce systemic abuse and delay by the insurance companies. Several other states provide similar remedies to their citizenry. CTIA strongly urges the Legislature to pass SB 763.

SUMMONS - CIVIL
(Except Family Actions)JD-CV-1 Rev. 1-2000
C.G.S. § 51-346, 51-347, 51-349, 51-350, 52-45a,
52-48, 52-269, P.B. Secs 3-1 thru 3-21, 8-1**STATE OF CONNECTICUT
SUPERIOR COURT**

www.jud.ct.gov

INSTRUCTIONS

1. Type or print legibly; sign original summons and conform all copies of the summons.
2. Prepare or photocopy conformed summons for each defendant.
3. Attach the original summons to the original complaint, and attach a copy of the summons to each copy of the complaint. Also, if there are more than 2 plaintiffs or 4 defendants prepare form JD-CV-2 and attach it to the original and all copies of the complaint.
4. After service has been made by a proper officer, file original papers and officer's return with the clerk of court.
5. The party recognized to pay costs must appear personally before the authority taking the recognizance.
6. Do not use this form for actions in which an attachment, garnishment or replevy is being sought. See Practice Book Section 8-1 for other exceptions.

TO: Any proper officer; BY AUTHORITY OF THE STATE OF CONNECTICUT, you are hereby commanded to make due and legal service of this Summons and attached Complaint.

"X" ONE OF THE FOLLOWING:
Amount, legal interest or property in demand, exclusive of interest and costs is:

- ☐ less than \$2,500
☐ \$2,500 through \$14,999.99
☒ \$15,000 or more

("X" if applicable)

☐ Claiming other relief in addition to or in lieu of money or damages.

RETURN DATE (Mo., day, yr.)

(Must be a Tuesday) 10/23/07

CASE TYPE (See JD-CV-1c)

Major ☒ Minor ☐ 09☒ JUDICIAL DISTRICT ☐ G.A. NO. AT (Town in which writ is returnable) (C.G.S. 51-346, 51-349)☐ HOUSING SESSION ☐ G.A. NO. MILFORD

ADDRESS OF COURT CLERK WHERE WRIT AND OTHER PAPERS SHALL BE FILED (No., street, town and zip code) (C.G.S. 51-346, 51-350)

14 WEST RIVER STREET, MILFORD, CT 06460

TELEPHONE NO. (with area code)

203-877-4293

PARTIES	NAME AND ADDRESS OF EACH PARTY (No., street, town and zip code)	NOTE: Individuals' Names: Last, First, Middle Initial	<input type="checkbox"/> Form JD-CV-2 attached	PTY NO.
FIRST NAMED PLAINTIFF	DESTEFANO, TYLER, PPA LORI DESTEFANO, 10 PIER COURT, MILFORD, CT 06460			01
Additional Plaintiff				02
FIRST NAMED DEFENDANT	CALDWELL, GEOFFREY, 99 BIRD LANE, MILFORD, CT 06460			60
Additional Defendant	CALDWELL, DENNIS, 99 BIRD LANE, MILFORD, CT 06460			61
Additional Defendant	CALDWELL, JUDITH P., 99 BIRD LANE, MILFORD, CT 06460			62
Additional Defendant				63

NOTICE TO EACH DEFENDANT

1. YOU ARE BEING SUED.
2. This paper is a Summons in a lawsuit.
3. The Complaint attached to these papers states the claims that each Plaintiff is making against you in this lawsuit.
4. To respond to this Summons, or to be informed of further proceedings, you or your attorney must file a form called an "Appearance" with the Clerk of the above-named Court at the above Court address on or before the second day after the above Return Date.
5. If you or your attorney do not file a written "Appearance" form on time, a judgment may be entered against you by default.
6. The "Appearance" form may be obtained at the above Court address.
7. If you believe that you have insurance that may cover the claim that is being made against you in this lawsuit, you should immediately take the Summons and Complaint to your insurance representative.
8. If you have questions about the Summons and Complaint, you should consult an attorney promptly. The Clerk of Court is not permitted to give advice on legal questions.

DATE
9/27/07

SIGNED (Sign and "X" proper box)

☒ Comm. of Superior Court
☐ Assistant ClerkTYPE IN NAME OF PERSON SIGNING AT LEFT
JOEL T. FAXON, ESQ.**FOR THE PLAINTIFF(S) PLEASE ENTER THE APPEARANCE OF:**NAME AND ADDRESS OF ATTORNEY, LAW FIRM OR PLAINTIFF IF PRO SE (No., street, town and zip code)
STRATTON FAXON, 59 ELM STREET, NEW HAVEN, CT 06510TELEPHONE NUMBER
203 (624-9500)JURIS NO. (if city, or law firm)
421593NAME AND ADDRESS OF PERSON RECOGNIZED TO PROSECUTE IN THE AMOUNT OF \$250 (No., street, town and zip code)
TARESSA CARANGELO, 59 ELM STREET, NEW HAVEN, CT 06510

SIGNATURE OF PLAINTIFF IF PRO SE

PLFS. # DEFS. # CNTS. SIGNED (Official taking recognizance; "X" proper box)
1 3 2☒ Comm. of Superior Court
☐ Assistant Clerk

For Court Use Only

FILE DATE

IF THIS SUMMONS IS SIGNED BY A CLERK:

- a. The signing has been done so that the Plaintiff(s) will not be denied access to the courts.
- b. It is the responsibility of the Plaintiff(s) to see that service is made in the manner provided by law.
- c. The Clerk is not permitted to give any legal advice in connection with any lawsuit.
- d. The Clerk signing this Summons at the request of the Plaintiff(s) is not responsible in any way for any errors or omissions in the Summons, any allegations contained in the Complaint, or the service thereof.

I hereby certify I have read and understand the above:

SIGNED (Pro Se Plaintiff)

DATE SIGNED

DOCKET NO.

COPY

RETURN DATE: OCTOBER 23, 2007 : SUPERIOR COURT
TYLER DESTEFANO, PPA : J.D. OF ANSONIA/MILFORD
LORI DESTEFANO
VS. : AT MILFORD
GEOFFREY CALDWELL,
DENNIS CALDWELL : SEPTEMBER 26, 2007
AND JUDITH P. CALDWELL

COMPLAINT

Count One: (Common Law Negligence as against the Defendants)

1. The Plaintiff, Lori DeStefano, brings this action as the mother of her minor child, Tyler DeStefano.
2. On May 1, 2007, the Defendant, Geoffrey Caldwell, operated a jeep owned by the Defendants, Dennis Caldwell and Judith P. Caldwell, with their general authority.
3. On that same date, the Defendant, Geoffrey Caldwell, was driving upon New Haven Avenue, a public roadway in Milford, Connecticut.
4. At that time and on that date, the Plaintiff's minor son, Tyler DeStefano, was upon a sidewalk located adjacent to said New Haven Avenue.
5. Then and there, the Defendant, Geoffrey Caldwell, lost control of his car and drove up onto said sidewalk striking the Plaintiff, Tyler DeStefano, causing him to suffer severe injuries.

6. The crash and resultant injuries to Tyler DeStefano were the direct and proximate result of the negligence of the Defendant, Geoffrey Caldwell, in that he:

- a. operated a motor vehicle while under the influence of alcohol and/or drugs in violation of General Statutes §14-227a;
- b. operated a motor vehicle at an unreasonable rate of speed in violation of General Statutes §14-218a;
- c. operated a motor vehicle above the posted speed limit in violation of General Statutes §14-219(c)
- d. failed to keep proper control of his motor vehicle;
- e. moved upon a public highway in an unsafe manner;
- f. failed to keep a proper lookout; and
- g. failed to brake to avoid hitting the plaintiff.

7. The negligent and careless operation by the Defendant, Geoffrey Caldwell, was a proximate cause and a substantial factor in causing Tyler DeStefano to incur and suffer: a) blunt force traumatic injuries; b) injury to his leg; c) pain and suffering; d) medical expenses; e) impairment of his earning capacity; and, f) impairment of his ability to carry on and enjoy life's activities.

8. As owners of the vehicle, the Defendants, Dennis Caldwell and Judith P. Caldwell are also liable.

Count Two: (Statutory Recklessness as against Geoffrey Caldwell)

1. - 5. Paragraphs 1 through 5 of Count One are hereby realleged and made paragraphs 1 through 5 of this Count Two as if fully set forth herein.

6. The crash and resultant injuries to the plaintiff's minor child were the direct result of the Defendant, Geoffrey Caldwell's reckless operation and disregard of the rights and safety of others using public roadways and walkways in that he did one or more of the following:

- a. operated a motor vehicle upon a public roadway while under the influence of alcohol and/or drugs in violation of Connecticut General Statutes § 14-227a when he knew or should have known, that such action was highly dangerous and likely to cause an accident;
- b. operated a motor vehicle upon a public roadway at a high rate of speed in violation of Connecticut General Statutes §14-218a when he knew or should have known that such action was highly dangerous and likely to cause an accident;
- c. operated a motor vehicle upon a public roadway recklessly in violation of Connecticut General Statutes §14-222 when

he knew, or should have known that such action was highly dangerous and likely to cause an accident; and

- d. operated a motor vehicle above the posted speed limit upon a public roadway in violation of Connecticut General Statutes §14-219(c) when he knew, or should have known that such action was highly dangerous and likely to cause an accident.

7. The illegal and reckless operation by the Defendant, Geoffrey Caldwell, was a violation of Connecticut General Statutes § 14-295 and a direct and substantial factor in causing the Plaintiff, Tyler DeStefano to incur and suffer: a) blunt force traumatic injuries; b) injury to his leg; c) pain and suffering; d) medical expenses; e) impairment of his earning capacity; and, f) impairment of his ability to carry on and enjoy life's activities.

8. The defendants are liable to the plaintiff for money damages, including double or treble damages pursuant to Connecticut General Statutes §14-295.

WHEREFORE, the Plaintiff claims;

1. Monetary damages within the jurisdiction of this Court;
2. Double or treble damages pursuant to Connecticut General Statutes § 14-295.

THE PLAINTIFF,

A handwritten signature in black ink, appearing to read "Joel T. Faxon", written over a horizontal line.

BY

Joel T. Faxon
Stratton Faxon
59 Elm Street
New Haven, CT 06510
Tel (203) 624-9500
Fax (203) 624-9100
Juris Number: 421593

**PLEASE ENTER THE APPEARANCE OF
STRATTON FAXON FOR THE PLAINTIFF.**

RETURN DATE: OCTOBER 23, 2007

: SUPERIOR COURT

TYLER DESTEFANO, PPA
LORI DESTEFANO

: J.D. OF ANSONIA/MILFORD

VS.

: AT MILFORD

GEOFFREY CALDWELL,
DENNIS CALDWELL
AND JUDITH P. CALDWELL

: SEPTEMBER 26, 2007

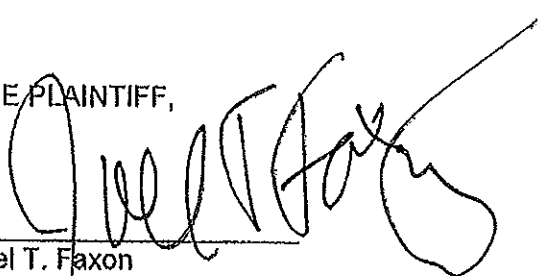
AMOUNT IN DEMAND

The amount in demand, exclusive of interest and costs is in excess of
\$15,000.00.

The Plaintiff further claims double or treble damages pursuant to
Connecticut General Statutes § 14-295.

THE PLAINTIFF,

BY


Joel T. Faxon
Stratton Faxon
59 Elm Street
New Haven, CT 06510
Tel (203) 624-9500
Fax (203) 624-9100
Juris Number: 421593

DOCKET NO.: NNHCV-08-5024890S	:	SUPERIOR COURT
FREDERICK ALTICE	:	J.D. OF NEW HAVEN
v.	:	AT NEW HAVEN
NATIONWIDE MUTUAL INSURANCE COMPANY	:	FEBRUARY 2, 2009

AMENDED COMPLAINT

COUNT ONE: BAD FAITH

1. At all times mentioned herein, Frederick Altice was an insured of the defendant Nationwide Mutual Insurance Company through an auto policy.
2. Through the auto policy, the defendant agreed to cover any issues caused by an uninsured motorist.
3. In or about March, 2002, the plaintiff suffered injuries as a result of the negligence of an uninsured motorist qualifying him for coverage under the defendant's policy.
4. Despite repeated demands made by the plaintiff, the defendant refused to cover the plaintiff's damages proximately caused by the uninsured motorist.
5. The defendant's refusal to settle in good faith with their insured represents a violation of their duty to act in good faith and deal fairly with the plaintiff.
6. As a result, the plaintiff had to file suit against the defendant, and expend great sums in attorney's fees and costs in securing a jury verdict and judgment against the insurer for these damages.

7. Furthermore, the plaintiff lost use of the money owed to him while he litigated his case, and spent substantial periods of time litigating the case, all to his financial loss.

COUNT TWO: VIOLATION OF THE CONNECTICUT UNFAIR TRADE PRACTICES ACT

1 – 7. Paragraphs 1.-7. of COUNT ONE are hereby incorporated in and made paragraphs 1.-7. of this COUNT TWO as if fully set forth herein.

8. The defendant's actions also constitute a violation of 42a-110(a), the Connecticut Unfair Trade Practices Act, through the Connecticut Unfair Insurance Practices Act 38a – 816 et seq. in the following ways:

- a) The defendant misrepresented its willingness to cover losses caused by uninsured motorists in violation of C.G.S. Section 38a – 816(1);
- b) The defendant utilized discrimination against the plaintiff on the basis of his sexual preference in violation of the Connecticut Constitution and C.G.S. Section 38a – 816(6); and
- c) The Defendant engaged in unfair claims settlement practices in violation of C.G.S. Section 38a-816(6).

9. These violations were committed unscrupulously and in complete disregard of the plaintiff's role as an insured of the defendant, and resulted in ascertainable economic loss.

WHEREFORE, THE PLAINTIFF CLAIMS:

- 1. Monetary damages;**
- 2. Punitive Damages pursuant to Conn. Gen. Stat. Section 42-110g; and**
- 3. Such further equitable relief as may pertain.**

THE PLAINTIFF HEREBY CLAIMS MONETARY DAMAGES, IN EXCESS OF FIFTEEN THOUSAND & 00/100 DOLLARS (\$15,000.00), AND THIS MATTER IS WITHIN THE JURISDICTION OF THIS COURT.

THE PLAINTIFF,
FREDERICK ALTICE

By:


MICHAEL A. STRATTON
STRATTON FAXON
59 ELM STREET
NEW HAVEN, CT 06510
PHONE NO. 203-624-9500
FAX NO. 203-624-9100
JURIS NO. 421593
mstratton@strattonfaxon.com

CERTIFICATION

This is to certify that a copy of the foregoing was mailed, postage prepaid, on this date, to all counsel and pro se parties of record as follows:

Nationwide Mutual Insurance Company
One Nationwide Plaza
Columbus, Ohio 43215
c/o CT Insurance Department
153 Market Street
Hartford, CT 06103


Michael A. Stratton